

IN THE MATTER OF	:	BEFORE THE
URIAH SIMONTON	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-015V

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DECISION AND ORDER

On May 27, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Uriah Simonton for variances to reduce the 30-foot setback from an arterial or collector public street right-of-way to 3 feet and to reduce the 20-foot setback from a public street right-of-way to 3 feet for a six-foot closed privacy fence in an R-12 (Residential: Single) Zoning District, filed pursuant to Section 110.D4.b(1)(a) of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Uriah Simonton testified in favor of the petition. Shirley Hartzell testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 6100 Downs Avenue, is located in the 1st Election District on the south side of Downs Avenue at its intersection with Old Washington Blvd. It is identified as Tax Map 38, Block 8, Parcel 307, Lot F (the "Property").
2. The .204-acre Property is a generally rectangular shaped lot with an angled corner at its intersection with Old Washington Blvd. It is improved by a two-story, single-family dwelling situated about mid-center on the Property, and fronting on Downs Avenue. A driveway off Old Washington Blvd situated about 119 feet from the front property line provides access to a one-story garage located behind and to the side of the dwelling.
3. This section of Old Washington Blvd. has a moderate upward slope to the north. A sign just before the Petitioner's driveways informs motorists that the road has limited sight distance.
4. All adjacent properties are also zoned R-12 and are improved with single-family detached dwellings.
5. The petition requests retroactive variances to reduce the 30-foot setback from an arterial or collector public street right-of-way to 3 feet and to reduce the 20-foot setback from an public street right-of-way to 3 feet for a six-foot closed privacy fence.
6. The petition states the Property is different from the character of the surrounding properties because it is a small corner lot.
7. Uriah Simonton testified that he runs an electrician's business out of his house and that his electrical equipment and tools are often stolen and that a lawful fence would not provide safety or privacy. He also stated that the fence could be moved back from Washington Blvd. to improve sight distance.

8. Shirley Hartzell testified that there is limited sight distance at the intersection and the sight distance problem has worsened because of the building boom in the area.

9. During my site visit, I had to pull out onto Old Washington Blvd. to see beyond the fence in order to make a left hand turn.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance does not comply with Section 130.B.2.a(1) through (4), and therefore must be denied.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar

topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

2. With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thusly:

“In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.”

North v. St. Mary’s County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Petitioner has not shown that the Property is in any way unique such that the side setback requirement of Section 110.D.4.b(1)(a) will disproportionately impact it. The Petitioner has not demonstrated that the Property is smaller or somehow unusual or different than neighboring R-12 properties, several of which, like the Property, are located at intersections. While the siting of the dwelling front on property located at an intersection of a

arterial or collector public street and a local public street is the characteristic that poses a problem in meeting the Petitioners' desire for a six-foot closed fence within the required setbacks, it is by no means unique.

3. Consequently, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, he has not shown that the Property itself has any unusual or unique characteristic that necessitates the variance requested. For this reason, the variance request fails to comply with Section 130.B.2.a(1).

4. Nor does the Petitioner's request pass the second prong. The Petitioner is not unreasonably prevented from making a permitted use of the Property because he may lawfully construct a three-foot closed fence or an open fence five feet or less in height. Section 110.D.4.b(1) and (2). For these reasons, the variance request fails to comply with Section 130.B.2.a(1).

5. In addition, by the Petitioner's own admission, the fence could be set back further from Washington Blvd. That being so, there appears to some issue as to whether the requested encroachments into the rights-of-way are the minimum necessary to afford relief. For this reason, the variance request also fails to comply with Section 130.B.2.a(4).

Conclusion

It is well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell*, id. While it may be desirable for the Petitioner to erect a six-foot closed fence 20 or 17 feet into the right-of-way, it is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the orderly development of land through the imposition of uniform regulations and standards. Variances to

these standards are therefore to be sparingly granted, and only under exceptional circumstances.

Cromwell, 651 A.2d at 430.

Simply put, if I were to grant a variance to this Petitioner to accommodate his personal desires and circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

The Petitioner in this case has not presented sufficient evidence to show that exceptional circumstances exist to warrant the grant of a variance to the setback requirements. Consequently, I am compelled to deny the request.

ORDER

Based upon the foregoing, it is this 19th day of June 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Uriah Simonton for variances to reduce the 30-foot setback from an arterial or collector public street right-of-way to 3 feet and to reduce the 20-foot setback from a public street right-of-way to 3 feet for a six-foot closed privacy fence in an R-12 (Residential: Single) Zoning District, is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

6/20/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.